IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 3365 OF 2007

Gulam Mohamed Abdul Razak Khan ..Applicant

versus

State of Maharashtra ..Respondents

Mr. Ganesh Gole for the Applicant.

Ms. S. D. Shinde, APP for the Respondents - State.

CORAM : V. C. DAGA, J.

DATE : 11TH OCTOBER, 2007.

P.C.

. Heard learned counsel for the applicant and the learned APP for the Respondents - State.

2. The learned Sessions Judge, Thane, while rejecting the application for bail vide order dated 5.10.2007 passed below Exhibit '1' in Criminal Bail Application No. 1403 of 2007 has recorded the following reasons:-

"Under the circumstances, there is certainly

> an eye witness who had seen the assailant and question of holding an identification parade comes into picture. The next question would be to recover the weapons used in the incident. From the facts disclosed in the statements it is apparent that the offence is u/s. 307 IPC. The case is therefore, serious in nature not only because of the injury that is but because of the manner in which it was caused and the weapon used for causing the same. In view of this position, in my opinion, custodial interrogation of the applicant is necessary firstly to establish the identity of the assailant and secondly to recover the weapon. The second question would not doubt depend upon the first question but both the purposes will be served by custodial interrogation of the applicant and the procedure to be followed to establish the identity. Though at this stage, it cannot be said with any certainty that it is the applicant who had fired the bullet, the possibility can get converted into probability only after necessary interrogation and the process to establish the identity. In view of these facts and the seriousness of the offence, I do not think that the applicant deserves to be granted bail. It is argued that after the interim order was passed on 13.9.2007 the police had never called the applicant for interrogation at the police station. In normal cases obviously this could have been relevant but question is to establish the identity and to recover the weapon which is possible only in custodial interrogation. In fact, when the identity is to establish, calling the applicant at the police station could have complicated the facts. In view of this position, the application has to be dismissed."

3. Having seen the aforesaid reasons, I concur with the same. In my view, considering that there

are strained relations between the present applicant and the victim in the backdrop of the nature and gravity of the offence alleged, the custodial investigation may be necessary.

4. At this stage, I may mention, that the learned counsel appearing for the applicant has heavily relied upon the Judgment of the Apex Court in the case of **Gurbaksh Singh Sibbia & Ors. vs. State of Punjab (AIR 1980 S.C. 1632).** Having gone through the said judgment, in my view, the law laid down in the said judgment can hardly be disputed, however, it has to be applied depending upon the facts and circumstances of each case considering the nature of the offence and gravity thereof. Looking to the peculiar facts of this case, there is no prima facie material to show that the applicant has been falsely implicated.

5. In the above view of the matter, the Application for anticipatory bail is rejected.

JUDGE